



To Village of Cottage Grove Board of Trustees

From Rick Manthe

Date March 11, 2020

Re Banning Vaping on Municipal Property

The Village of Cottage Grove (Village) requested an opinion as to whether the Village could regulate or ban vaping on open air Village properties. It is our opinion that the Village may regulate or ban vaping on all Village property.

Generally, the Village can enact ordinances regulating conduct on Village property. Wis. Stat. §§ 61.34(1) and (5). Additionally, Wis. Stat. § 101.123 generally governs prohibitions against smoking. The statute lists specific indoor and outdoor areas where smoking is prohibited. In addition, Wis. Stat. § 101.123(4m) provides authority for local governments to further regulate smoking, including in outdoor areas under local government jurisdiction. The statute specifies that it does not limit the authority of local governments to “enact ordinances...that...protect the health and comfort of the public”. The statute limits the scope of ordinances regulating or prohibiting outside smoking “only to the public property under the jurisdiction of the” Village. Although this statute only applies to smoking in the traditional sense, it arguably grants the Village authority to also regulate vaping on public property to “protect the health and comfort of the public”.

Accordingly, neither generally applicable statutes nor statutes specific to tobacco use prohibit the Village from regulating the use of vaping products on Village property. Therefore, it is our opinion that the Village can enact an ordinance prohibiting vaping within Village parks, including outdoor areas under the Village’s jurisdiction.